

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

State of Illinois, Department of Transportation,
Petitioner,

v.

Illinois Central Railroad Company,
Respondent.

T02-0090

Petition for authorization to replace the grade separation structure carrying IL Rt. 17 (Court Street) over IC's tracks located in the City of Kankakee, Kankakee County, Illinois and for a waiver of the clearance requirements of 92 Ill. Adm. Code Section 1500.

ORDER

By the Commission:

On September 9, 2002, the State of Illinois, Department of Transportation ("IDOT") filed the above-captioned petition with the Illinois Commerce Commission ("Commission"), therein naming as Respondent the Illinois Central Railroad Company ("the IC").

There is an existing bridge at the subject site, which is in deteriorating condition. Since the grade separation structure carries Illinois Route 17 (Court Street) over the IC's tracks and this is a primary thoroughfare through the City of Kankakee, it is essential for the safety and convenience of the traveling public that it be maintained.

IDOT entered into an Agreement with the IC in October 1996, for the construction, maintenance, and division of expense of the proposed overpass structure and requests that the Commission approve the Agreement. A copy of the Agreement was filed with the Commission as Exhibit B of the Petition. IDOT requests that the relief sought in the petition be granted without hearing.

A proposed order was served upon the parties on or about October 4, 2002. No briefs on exceptions were filed.

The Commission, having been advised of the entire record herein, finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;

- (2) the recitals of fact as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- (3) permission should be granted for the reconstruction of the grade separation structure over the tracks of the IC at the site of the existing grade separation structure in the City of Kankakee, Kankakee County, Illinois;
- (4) the Agreement, executed by IDOT on October 18, 1996 and by the IC on October 11, 1996, governing the construction, maintenance, and division of expense of the grade separation structure is fair and reasonable and should be approved insofar as the matters therein are within the control and jurisdiction of the Commission;
- (5) IDOT also requests a waiver of the vertical clearances as required by 92 Illinois Administrative Code ("I.A.C.")1500; undercutting along the IC's tracks to provide clearance of the required twenty-three feet (23') would be prohibitively expensive and involve platform modifications, rock excavation, drainage, underground utilities, and grade crossing adjustments along adjacent streets; it is fair and reasonable that the waiver of vertical clearance requirements be granted;
- (6) IDOT anticipates completion of the project by May 31, 2004;
- (7) a hearing in this matter is not required;
- (8) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that IDOT is hereby authorized, permitted, and required to construct a replacement grade separation structure carrying Illinois Route 17 (Court Street) over the track of the IC in the City of Kankakee, Kankakee County, Illinois.

IT IS FURTHER ORDERED that the Agreement attached to the Petition as Exhibit B and made a part hereof be, and it is hereby approved insofar as the

matters contained therein are within the control and jurisdiction of the Commission.

IT IS FURTHER ORDERED that the reduced vertical clearances as shown on Exhibit A, attached to the Petition, and made a part hereof, be, and they are hereby, permitted.

IT IS FURTHER ORDERED that said permission is granted on the condition that warning signs on or about the reduced clearances as prescribed by 92 I.A.C. 1500 shall be installed and maintained by the IC in a conspicuous location at the approach along the tracks to the area containing the reduced clearances, and that said signs shall either be hood lighted or flood lighted so as to be clearly visible during the hours of darkness; and that printed rules shall be issued by the IC prohibiting its employees from occupying the tops or sides of the cars while in motion in the vicinity of the reduced clearances; a bulletin shall also be issued by the IC advising their employees of the close clearance and the location of the close clearance.

IT IS FURTHER ORDERED that IC shall furnish a copy of the printed rules and bulletin hereinbefore required to the Director of Processing and Information of the Commission's Transportation Division within five (5) days of the date of issuance.

IT IS FURTHER ORDERED that IDOT at six (6) month intervals from the date of this Order, shall file written reports with the Director of Processing and Information of the Commission's Transportation Division, stating the progress made toward completion of the work herein authorized; the initial report shall include the name, title, mailing address, telephone number, and facsimile number of IDOT's employee responsible for the management of this project. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), and type of improvement.

IT IS FURTHER ORDERED that IDOT shall notify the Director of Processing and Information in writing upon completion of its work, said notice to be submitted within five (5) days after the completion date.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing and Information no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing and Information no later than twenty-one (21)

days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny request for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders as it may deem necessary.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 7th day of November, 2002.

Kevin H. Wright

Chairman

JUDGE <i>JB</i>
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR